

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)
Plaintiff,) 8:05CR116
vs.)
MARK REX,) REPORT AND
Defendant.) RECOMMENDATION

On August 15, 2005, defendant Mark Rex (Rex), together with his counsel, Lawrence G. Whelan, appeared before the undersigned magistrate judge and was advised of the charges, the penalties and the right to appear before a United States District Judge. After orally consenting to proceed before a magistrate judge, Rex entered a plea of guilty to Count I of the Indictment.

After being sworn, Rex was orally examined by the undersigned magistrate judge in open court as required by Federal Rule of Criminal Procedure 11. Rex also was given the advice required by that Rule. Finally, Rex was given a full opportunity to address the court and ask questions.

Counsel for the government and counsel for Rex were given the opportunity to suggest additional questions by the court. Moreover, both counsel orally certified that they were of the opinion that the plea was knowing, intelligent and voluntary, and that there was a factual basis for Rex's plea of guilty to Count I of the Indictment.

Therefore, I find and conclude that: (1) the plea is knowing, intelligent, and voluntary; (2) there is a factual basis for the plea; (3) the provisions of Rule 11 and any other provisions of the law governing the submission of guilty pleas have been complied with; (4) a petition to enter a plea of guilty, on a form approved by the court, was completed by Rex, Rex's counsel and counsel for the government, and such petition was placed in the court file (Filing No. 76); (5) the plea agreement is in writing and is filed in the court file (Filing No. 77); (6) there were no other agreements or stipulations other than as contained in the written plea agreement except the government (a) agreed to be bound by the plea agreement even though the \$100

Special Assessment had not been paid at the time of the entry of the plea and (b) agreed to dismiss the remaining counts of the Indictment against Rex at the time of sentencing on Count I of the Indictment.

IT IS RECOMMENDED TO JUDGE LAURIE SMITH CAMP that:

1. She accept the guilty plea and find the defendant, Mark Rex, guilty of the crime set forth in Count I of the Indictment to which Rex tendered a guilty plea;
2. She accept the written plea agreement with the understanding that the court is not bound by the parties' stipulations, but may with the aid of the presentence report, determine the facts relevant to sentencing.

ADMONITION

Pursuant to NECrimR 57.3 any objection to this Report and Recommendation shall be filed with the Clerk of the Court within ten (10) days after being served with a copy of this Report and Recommendation. Failure to timely object may constitute a waiver of any such objection. The brief in support of any objection shall be filed at the time of filing such objection. Failure to file a brief in support of any objection may be deemed an abandonment of the objection.

DATED this 15th day of August, 2005.

BY THE COURT:

s/Thomas D. Thalken
United States Magistrate Judge